

Völkerrechtsblog

Der Blog des Arbeitskreises junger Völkerrechtswissenschaftler*innen

≡ Navigation



FORUM

Open Access on the shores of international legal scholarship

Völkerrechtsblog's experience with providing open access to scholars from 156 countries around the world

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The digital revolution is hitting the shores of academic publishing. Online resources increasingly gain ground, and open access has become the call of the day – and a hotly debated issue. Political and academic initiatives favor and fund open access, for instance the digital strategy of the German Ministry of Education and Research or the Open Access 2020 initiative of the Max Planck society. For its

advocates, open access promises the proliferation of knowledge and free discourse (see e.g. the Berlin Declaration on Open Access to Knowledge or the Siggenger Thesen). Opponents see open access publishing as the end of academic freedom and the beginning of state authoritarianism, or neo-liberal performance absolutism in science.

With this post, *Völkerrechtsblog*, the leading international law blog in German-speaking academia, takes up the debate on open access in cooperation with the French blog *Blogdroiteuropeen*, which is currently hosting a symposium on open access. This is fitting, because blogs are often hailed as pioneers of open access in science generally, and as a silver lining in otherwise open-access-skeptical legal academia, as an earlier post in this symposium pointed out already. As an international law blog, *Völkerrechtsblog* is in a rather special position: For a branch of legal scholarship claiming relevance beyond national borders, open access to scholarship and a transnational legal discourse uninhibited by national copyright restrictions and paywalls is a question of identity. This is especially so if one is committed, as we are, to including scholars from the Global South whose institutions are often unable to afford expensive publications or subscriptions from commercial publishers in the North. And indeed: *Völkerrechtsblog*'s statistical tool shows that we have readers worldwide – in 156 countries, to be precise.

In the remainder of this post, we would like to share some preliminary thoughts on international law and open access. How does international law affect open access to scholarship? How far does open access to international legal scholarship currently go? And under what conditions can

blogs be pioneers of openly accessible, transnational legal discourse?

International legal aspects of open access to scholarship

The ambivalence of international law about open access to scholarship is expressed in one and the same Article of the Universal Declaration of Human Rights, Article 27: It recognizes the “right to the protection of the moral and material interests resulting from any scientific ... production”, while at the same time enshrining the right to “to share in scientific advancement and its benefits”. Although there is no really “global” copyright law, the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) of the World Trade Organization (WTO) and the Copyright Treaty of the World Intellectual Property Organization (WIPO) have to some extent universalized minimum standards on copyright, including to scientific publications. The relevant treaties are based on the idea of an exclusive reproduction right, with some exceptions (so called “three step test”, see Art. 13 TRIPS and thereto e.g. here).

This traditional regime stands in contrast to open access strategies as formulated by transnational multi-stakeholder initiatives, namely the Budapest Open Access Initiative: “By ‘open access’ to [peer-reviewed research literature], we mean its free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself.” Some international organizations, like

UNESCO and the OECD, promote open access to educational resources. The World Bank has itself switched to a publication model in which it licenses its own publications for free use and re-use under a Creative Commons license specifically developed for international organizations.

Open access to international legal scholarship

International legal scholarship shares in many ways the fate of other disciplines when it comes to licensing and open access. International law scholars routinely transfer exclusive rights to the publishers of their books and articles, chiefly for reputational reasons. A brief survey shows that on the market of specialized quality journals in international law, closed access journals still dominate. International law also partakes in the general skepticism towards open access in legal academia: When new legislation in the German state of Baden-Württemberg required scholars at public universities to exercise their new right to secondary open access publication one year after initial commercial publication, it was the law professors of an affected university that challenged this rule in court. Teaching in international law – like in any other discipline – is currently hampered by the legal dispute about digital syllabi between universities and the German collective copyright enforcement agency VG Wort.

This situation stands in contrast to the fact our research is not limited to single legal orders. International law is, by its very nature, a transnational subject matter and a transnational discourse that cannot silo itself off along the lines of national copyright laws. Diverging legal copyright systems hamper a truly transnational publication market and restrict access particularly for scholars from less well-

endowed research institutions. In light of this inherent internationalism, it is maybe not surprising that one notable exception in the German legal publication market is the open access Goettingen Journal of International Law (see [here](#)). This open publishing infrastructure will have to grow further with new initiatives, such as the European Commission's ERC grant open access requirements. A further impetus can be expected from the open access strategy of the Max Planck Society, whose Institute for Comparative Public Law and International Law in Heidelberg is a leading institution for international legal scholarship in Germany.

Readers from 156 countries: Blogs as open access pioneers

Can blogs like *Völkerrechtsblog* fill this gap to open access? Prima facie, the idea of an easy to handle and globally accessible publication format seems to be a promising tool for enhancing truly transnational academic discourses. Blogs are typical examples of formats making use of modern technologies, which allow for more flexibility and dynamism than traditional scientific communication in journals and books (see [#Siggener Thesen #5](#)). The fact that some of the most renowned international law journals have their own blog is evidence of a synergetic coexistence between such old and new forms (cf. [EJIL: Talk!](#) and [AJILUnbound](#)). Further empirical evidence come from the statistics of *Völkerrechtsblog* itself: Our authors hail from Europe, both Americas, Africa, Asia and Australia alike, and we have readers from 156 countries. The USA, Australia, India, Brazil, Turkey and Canada feature in the top 15 of the States where our blog is most read.

Certain framework conditions explain this success, and also counter some concerns linked to open access. All contributions on *Völkerrechtsblog* are subject to the creative commons license BY SA 4.0, which requires attribution of authorship but otherwise allows free use and re-use, even for commercial purposes (which enables re-use on websites with advertising, which is found on most not-for-profit, free online presences), as long as the free license is passed on under the same conditions (“share alike”). This balances the need to protect our authors with maintaining the open transfer of knowledge. From 2017 onwards, all contributions published on the blog will receive a DOI number and be archived to guarantee their long-term availability and permanent citation. Our system of double-blind peer review ensures quality control. Finally, we work together with established journals to ensure high quality publications and as a leverage to open access, for instance the Leiden Journal of International Law and the Law and Politics in Asia, Africa and Latin America. Indeed, some otherwise closed journals make their articles openly accessible when they are subject to a discussion on *Völkerrechtsblog*. This indicates that blogs do not compete with, or even replace, established forms of scientific communication, but rather complement them and open up additional space for conversation.

Of course, open access has risks that need to be managed, and it is no panacea to bring about a truly transnational discourse in international legal research. Other factors, like language, national incentives and social fields also play a role (cf. only here). But it is certainly not farfetched to say that open access would help to remove barriers (see e.g. here and Siggenger Thesen #2). How this can be done exactly, and what risks need to be managed, should be subject to further debate that is openly accessible – as on this blog.

This contribution is part of a symposium, and cross-posted, on Blogdroiteuropeen.

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